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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/388,804	09/01/1999	PETE N. MOORE	81862.P157	4456

7590

12/03/2002

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EXAMINER

EMDADI, KAMRAN

ART UNIT

PAPER NUMBER

2664

DATE MAILED: 12/03/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/388,804

Applicant(s)

MOORE, PETE N.

Examiner

Kamran Emdadi

Art Unit

2664

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 September 1999.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 September 1999 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Drawings

1. This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefore, subject to the conditions and requirements of this title.

3. Claims 9-15 are rejected under 35 U.S.C. 101 because the category of devices “A routing resource” and “A router configured to” are not appropriate categories for an independent claim heading.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. A single means, "Computer-readable instructions to", as in claims 16-23, which covered every conceivable means for achieving the stated purpose is non-enabling for the scope of the claim because the specification disclosed at most only those means known to the inventor.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

7. The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).
8. Claims 1, 2, and 5-8 are rejected under 35 U.S.C. 102(e) as being anticipated by Burwell (US Patent No. 5818842).
- Regarding claim 1, Burwell teaches: a route server routing device to function as a link between an ATM network and a LAN (Ethernet) network (Col 3, lines 16-24), where one form of a WAN is an ATM network (Col 1, lines 16-17), and ports for both networks are combined to communicate with fairness to bandwidth allocation amongst ports for the ATM and Ethernet connectivity (Col 9, lines 35-40) and (Figure 18).
 - Regarding claim 2, it is an inherent feature of bandwidth allocation in ATM networks to allow an individual device to exceed what would be its fair share of

bandwidth use when the availability of bandwidth is not being optimized by all sharing devices simultaneously.

- Regarding claims 5-8, Burwell teaches: a fairness scheme used to enable bandwidth sharing amongst the transmitting devices (Col 9, lines 15-25), and a routing device to direct traffic (Col 19, lines 1-10) in regards to an exit point to allow bandwidth correspondence it is an inherent function of a routing device to have an exit point in order to enable bandwidth to be used for routing data traffic into and out of a router.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burwell (US Patent No. 5818842) in view of Spinney (US Patent No. 6426943). Burwell teaches: a network system of bandwidth allocation with the need to drop packets based on a filtering requirement (Col 8, lines 20-24), but fails to teach of devices on a network occupying bandwidth in a manner exceeding their tentative thresholds and then being restrained from doing so when new bandwidth needing devices appear requiring bandwidth. Spinney teaches: a network system operating at by the Ethernet standard (Col 10, lines 60-64), a Stand-by Scheduler device that appropriates dynamic bandwidth allocation to active devices and notes that only some

of a group of devices will be active at one time and the stand-by bandwidth can be used appropriately as the devices come ready to send data. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to have combined the disclosed network embodiment with a dynamic bandwidth scheme in order to allow for efficient distribution of bandwidth for a diversified network.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Boot et al. (US Patent No. 5896377) Broadband/Narrowband internetworking.
- Holden (US Patent No. 5570348) ATM switching architecture.
- Lyles (US Patent No. 5325356) Aggregating ports on an ATM switch.
- Holden (US Patent No. 6151301) ATM switching architecture.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kamran Emdadi whose telephone number is (703) 305-4899. The examiner can normally be reached between the hours of 8am and 5pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wellington Chin, can be reached at (703) 305-4366. The fax phone numbers for the organization where this application or proceeding is assigned is (703) 872-9314 for regular communications. Any inquiry of a general nature or relating to

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the status of this application or proceeding should be directed to the receptionist
whose telephone number is (703) 305-3900.

Kamran Emdadi

11/16/2002

KWANG BIN YAO
PRIMARY EXAMINER

